



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOHNATHAN K. DAVIDSON

VS.

XTO ENERGY, ET AL.

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CIVIL ACTION NO. 4:14-CV-705-K

FINDINGS, CONCLUSIONS, AND RECOMMENDATION REGARDING
DEFENDANT'S MOTION TO DISMISS

Pending before the Court is Defendant XTO Energy's Motion to Dismiss [doc. 17], filed September 18, 2014. In the motion, Defendant requests that the Court dismiss the above-styled and numbered cause pursuant to Federal Rule of Civil Procedure 12(b)(6). A review of Defendant's motion indicates that Defendant has raised several potentially meritorious reasons as to why some or all of Plaintiff's claims should be dismissed. However, because Plaintiff, in his response filed on October 22, 2014, requests that the Court grant him leave to amend his pleading if the Court finds that one or more of Plaintiff's theories of recovery are not properly pled, the Court concludes that Defendant's motion to dismiss should be **DENIED** and Plaintiff should be given a final opportunity to amend his complaint to plead their "best case." *See, e.g., Dark v. Potter*, 293 F. App'x 254, 256-57 (5th Cir. 2008); *Crucci v. Seterus, Inc.*, No. EP-13-CV-317-KC, 2013 WL 6146040, at *8 (W.D. Tex. Nov. 21, 2013).

RECOMMENDATION

Based on the foregoing, it is **RECOMMENDED** that Defendant's Motion to Dismiss [doc. 17] be **DENIED WITHOUT PREJUDICE**. It is further **RECOMMENDED** that Plaintiff, if he desires to continue to assert his claims against the Defendants, be allowed to file an amended complaint. Plaintiff's failure to timely file such complaint may result in the dismissal of this case without further notice.

**NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT**

Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions and recommendation within fourteen (14) days after the party has been served with a copy of this document. The United States District Judge need only make a *de novo* determination of those portions of the United States Magistrate Judge's proposed findings, conclusions and recommendation to which specific objection is timely made. *See* 28 U.S.C. § 636(b)(1). Failure to file, by the date stated above, a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual findings and legal conclusions accepted by the United States District Judge. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

ORDER

Under 28 U.S.C. § 636, it is hereby **ORDERED** that each party is granted until **December 16, 2014** to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation. It is further **ORDERED** that if objections are filed and the opposing party chooses to file a response, the response shall be filed within seven (7) days of the filing date of the objections.

It is further **ORDERED** that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions and recommendation, be and hereby is returned to the docket of the United States District Judge.

SIGNED December 2, 2014.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE